



## Drug Testing Updates

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## Agenda

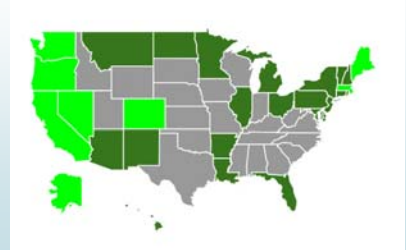
- Drug Testing Trends
- Prescription Medicine
- Recommended Drug Testing Panel and Reasons for Testing
- TN Drug Free Workplace Program Updates
- U.S. Department of Health and Human Services/Department of Transportation Updates
- OSHA Final Rule: Post Accident Testing
- Reasonable Suspicion Testing

## Drug Positivity Highest Rate in 12 Years

- Cocaine positivity increased 12% in 2016.
- Marijuana positivity increased nearly 10% in 2016 in federally mandated, safety-sensitive workplaces.
- Increases in CO and WA double the national average (4% national, 11% CO, and 9% WA).
- Methamphetamine positive remains high.
- Heroin detection plateaus in general U.S. workforce, while prescription opiate detection declines.

## Marijuana Legalization

- Light Green - Marijuana legalized for recreational use.
- Dark Green - Medical marijuana broadly legalized.
- Gray - No broad laws legalizing marijuana.

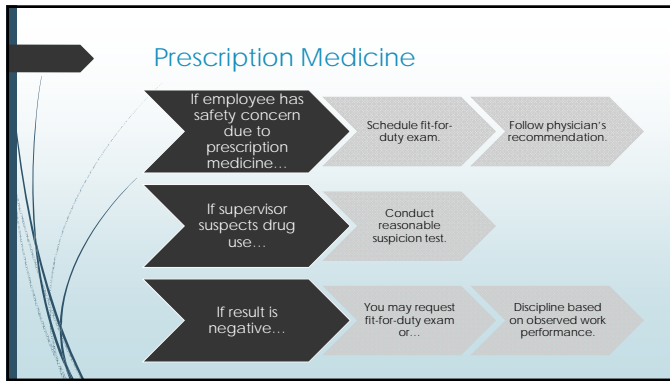


## The Impact of Marijuana Legalization in Colorado

- Released *The Legalization of Marijuana in Colorado The Impact, Volume 3* on 9/15/2015. Highlights for 2014...
  - 32% increase in marijuana-related traffic deaths in just one year from 2013.
  - Toxicology reports with positive marijuana results of active THC for primarily driving under the influence have increased 45%.
  - Colorado youth usage (ages 12 - 17) ranks 56% higher than the national average.
  - 29% increase in the number of marijuana-related emergency room visits.
  - 38% increase in the number of marijuana-related hospitalizations.
  - Seizures of illegal Colorado marijuana increased another 34%.

## Prescription Medicine

- Nothing in your policy should preclude the appropriate use of legally prescribed medications.
- However, if the use of prescription drugs leads to impairing effects that could adversely affect your ability to safely perform your job functions you must notify a supervisor.
- Regarding this notice, employees are not to disclose the name of the medication nor the reason for its use to their supervisor.
- A fitness-for-duty evaluation will be conducted. Their physician and MRO will make a recommendation.



### Drug Testing Panel

*Our company reserves the right to test for any illegal substance.*

- Cannabinoids
- Cocaine
- Amphetamine/Meth
- Opiates
- Phencyclidine (PCP)
- Benzodiazepines (Vallium, Xanax)
- Barbiturates (Phenobarbital)
- Propoxyphene (Darvon, Darvocet)
- Methadone
- Synthetic Opiates (Hydrocodone, Oxycodone)
- Synthetic Marijuana
- Synthetic Stimulants (Bath Salts, Mephedrone)

### Reasons for Testing

- Pre-Employment
- Post Accident
- Reasonable Suspicion
- Follow-Up
- Routine Fitness For Duty
- Random (Required by DOT)

### TN Drug-Free Workplace Program Education Update

**Are you interested in making your workplaces safer for your employees and customers?**

Are you also interested in cutting your workers' compensation claims and premiums? If so, you might be interested to know that as a result of passage of Public Chapter 16-1056, the requirements for being certified as a TN Drug-Free Workplace Program (DFWP) have been simplified.

Since July 1, 2016, employers participating in the Tennessee Drug-Free Workplace Program are no longer required to provide annual re-testing for its employees and supervisors of those employees and supervisors have already undergone such testing at least once (for example, when hired). Now each employee and each supervisor must simply acknowledge in writing, each year, the existence of the employer's drug-free workplace policy.

Participating employers must also certify on a form provided by the Bureau of Workers' Compensation that both of these requirements have been met. The form and additional information about the TN Drug-Free Workplace Program are available on the Bureau's website: [www.tn.gov/workforce/tn-drug-free-workplace-program](http://www.tn.gov/workforce/tn-drug-free-workplace-program)

Want additional information or have more questions? Contact:

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### US Dept. Health & Human Services (HHS) & DOT Updates

- Effective October 1, 2017 for US Dept. of HHS
  - MDEA will no longer be tested under the standard panel.
  - Oxycodone, oxymorphone, hydrocodone, and hydromorphone will be added to the standard panel.
- New Federal CCF has been approved by HHS, but DOT-regulated employers are to continue using the 'old' CCF until further notice per DOT's ODAPC.
- 2013 FMCSA Clearinghouse - DOT hopes to have database website active by January 2020 and will allow 3 years for companies to full comply.

### OSHA Final Rule Injury and Illness Reporting

- Final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses.
- Post-incident testing should be limited to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.
- It would likely not be reasonable to drug test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction.
- Employers need NOT specifically suspect drug use, but there should be reasonable possibility that drug use could be a contributing factor.

## Post Accident Testing Criteria

### DOT FMCSA

- Fatality OR
- Driver Citation and Vehicle Towed OR
- Driver Citation and Medical Assistance Required
- To qualify as DOI Accident, driver must be operating DOT vehicle (26,001+ lbs, carrying 16+ passengers, or placarded due to transportation of hazardous material).
- If criteria is met, drug screen required within 32 hours and alcohol test required within 2 hours (up to 8 hours, after 2 hours must document why test has not yet been conducted).

### IN DWFP

- Employee taken to medical facility for treatment.
- For non-emergency injuries reported after the fact, testing must be done when injury is entered into OSHA 300 log.
- Best practice is to follow DOT FMCSA rule and conduct drug screen within 32 hours and alcohol test within 2 hours.

### Other

- Is there a reasonable possibility that drug use by the reporting employee was a contributing factor to the reporting injury or illness?
- Employers need not specifically suspect drug use before testing, but employee must have been at fault and demonstrated poor judgment that could have been caused by impairment.
- Best practice is to follow DOT FMCSA rule and conduct drug screen within 32 hours and alcohol test within 2 hours.

## Reasonable Suspicion Testing

1. Observe
2. Confirm (Draft Documentation)
3. Confront
4. Test
5. Transport (Formal Documentation)

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### OBSERVED BEHAVIOR REASONABLE SUSPICION RECORD

Employee: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Time: \_\_\_\_\_

1. **Observe**

2. **Confirm (Draft Documentation)**

3. **Confront**

4. **Test**

5. **Transport (Formal Documentation)**

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_

Thank you for your attention!